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14 JUN 1961

MEMORANDUM FOR: Director of Central Intelligence**SUBJECT: Extraterritorial Effect of Criminal Statutes**

1. This memorandum is for information only.

2. Some criminal statutes specify that they will have extra-territorial effect, some are limited in jurisdiction and scope by their own language, and others are silent on the extent of the jurisdiction. In the last instance the better rule appears to be that a criminal statute will not have extraterritorial effect unless the intent of Congress in that regard is reasonably clear from the language of the act. However, in the *Bowman* case, which involved an indictment for conspiracy to defraud a corporation of which the United States was a stockholder, the Supreme Court stated, "Some such offenses can only be committed within the territorial jurisdiction of the government because of the local acts required to constitute them. Others are such that, to limit their locus to the strictly territorial jurisdiction, would be greatly to curtail the scope and usefulness of the statute, and leave open a large immunity for frauds as easily committed by citizens on the high seas and in foreign countries as at home. In such cases, Congress has not thought it necessary to make specific provision in the law that the locus shall include the high seas and foreign countries, but allows it to be inferred from the nature of the offense."
(*United States v. Bowman*, 255 U.S. 94 (1921))

3. There is some debate among lawyers as to whether the *Bowman* case would be followed today to permit establishment of the intent of Congress by inference. This is important in connection with the present status of the Espionage Acts. The original act in 1911 was specifically stated to have extraterritorial effect.

This has been modified over the years until the present chapter containing the Espionage Laws opens with section 791 of Title 18 U. S. C., which reads "This chapter shall apply within the admiralty and maritime jurisdiction of the United States and on the high seas, as well as within the United States." Quite clearly this chapter would not have extraterritorial effect. There is, however, a separate statute punishing any officer or employee of the United States who communicates classified information knowing it to be classified to a representative of any foreign government or member of any communist organization without being specifically authorized to do so. This was enacted in the Internal Security Act of 1950 and is considered to have extraterritorial application. It should be noted this Act has not been tested in the courts and may present problems since many lawyers are concerned that a statute making it a crime to pass "classified information" is not sufficiently definite particularly so where there is no accompanying definition of classified information in the statute. However, a person not an officer or employee of the United States who commits an act of espionage in a foreign country is not indictable for that act under the Espionage Laws in the United States. He may, of course, be subject to prosecution under the law of the foreign government, and this is true even if the act were committed in the U. S. Embassy or Consulate, provided the foreign country concerned could arrest him outside the U. S. diplomatic property.

4. For some years this office has been carrying on discussions with the Department of Justice, looking to an extension of the jurisdiction of the Espionage Laws. For example, by letter of 20 February 1958, the Agency raised a number of questions concerning tightening of the security laws including the question of extension of jurisdiction. Partly as a result of this letter and our previous conversations, Justice introduced a bill to extend the jurisdiction of the Espionage Laws by the method of repealing section 791 cited above. The former Attorney General and the present one have both stated to the Congress that in their opinion such a repeal would effectively provide extraterritorial jurisdiction in the light of the language of the Supreme Court in the *Bowman* case. Despite such authority, we have had doubts that this would necessarily be the case. Not only is there some question as to whether the *Bowman* case would be followed, but even if it were the legislative history of the Espionage Acts would indicate a congressional intent to limit jurisdiction rather than to extend it. We have suggested to Justice, therefore, that instead of

repealing section 791 it be amended to add the words "and elsewhere" after the words "high seas." The Department of Justice has not agreed with our viewpoint and continues to sponsor simple repeal.

5. The first bill to extend the jurisdiction of the Espionage Acts (chapter 37 of Title 18) by repeal of section 791 of that Title was passed by the House of Representatives on 18 August 1958. This bill failed of passage in the Senate, however, and an identical bill was introduced in the 86th Congress and passed in the House on March 2, 1959. On the Senate side, in early 1960, the staff of the Senate Internal Security Subcommittee worked with the House-passed bill, H. R. 1992, attempting to incorporate the House provisions into an Omnibus Bill, S. 2452. In viewing a draft of S. 2452, Agency representatives advised the Subcommittee staff that the language utilized was technically incorrect in that it did not go to jurisdiction but simply to venue. The staff appreciated our suggestions and said they would correct the matter. In addition, we furnished them an Agency-prepared legal memorandum entitled "Broadening the United States' Jurisdiction Under the Espionage Laws." The thrust of this memorandum was to recommend specific words in section 791 indicating its applicability overseas rather than a simple repeal of 791. Eventually S. 2452 was reported out in the Senate without clarifying the language as to jurisdiction and also it did not utilize specific words pertaining to extension of jurisdiction. This was again brought to the attention of the Internal Security Subcommittee in August of 1960 and they indicated that they hoped to introduce a separate bill containing the specific wording as to extension of jurisdiction so that it could be utilized as a vehicle for amending S. 2452 when it came up on the Senate calendar. This did not come to pass.

6. During the hearings conducted by the Special Subcommittee of Armed Services to Investigate Intelligence Agencies as an aftermath of the Martin-Mitchell affair, it was pointed out by the Agency in its testimony that the Espionage Acts did not extend to offenses occurring abroad. In October 1960, at the request of the House Committee on Un-American Activities for suggestions of legislation in the security field, we brought to their attention the lack of extraterritorial effect of the Espionage Laws and left with them our legal memorandum "Broadening the United States' Jurisdiction Under the Espionage Laws." Subsequently, on January 3, 1961, Mr. Walter introduced an Omnibus Bill, H. R. 6,

to amend the Internal Security Act of 1950, and for other purposes. Included in that bill was provision for extending the jurisdiction of the Espionage Laws, utilizing specific words rather than repeal of section 791. No final Committee action has been taken on this Omnibus Bill.

7. On January 14 Mr. Poff introduced a bill to extend the jurisdiction of the Espionage Laws through the device of repealing section 791. Shortly after this bill was introduced we raised with Mr. Poff the question of the precise wording which would best accomplish the purpose which he had in mind and left with him the legal memorandum on broadening the United States' jurisdiction mentioned above. Subsequently, on 7 June 1961, the House Judiciary Committee reported out H. R. 2730 favorably. In the report there are included letters from the present Attorney General as well as the former Attorney General, both of which support the type of legislation in H. R. 2730 and comment that the Department of Justice recommends repeal of section 791 which will thus give extraterritorial effect to chapter 37 within the rule expressed in United States v. Bowman.

8. On other occasions the Agency has informally pressed for action or supported extension of the jurisdiction of the Espionage Laws. For example, we have pointed out this deficiency and discussed it with at least two members of the Kilday CIA Subcommittee. On another occasion this was mentioned to Senator Kenting who had been most interested in this bill when he was in the House of Representatives.

s/ Lawrence R. Houston

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